STATE OF MICHIGAN

COURT OF APPEALS

JACQUETTA DANTZLER,

Plaintiff-Appellant,

v

KATHLEEN ELLIOTT and JP MORGAN CHASE BANK,

Defendants-Appellees.

UNPUBLISHED
December 15, 2011

No. 301141
Genesee Circuit Court
LC No. 09-092544-CZ

Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals by right the dismissal of her employment discrimination lawsuit. The trial court entered summary disposition pursuant to MCR 2.116(C)(10) and dismissed the case with prejudice upon finding no direct evidence of discrimination and no evidence of an adverse employment action. We affirm.

Plaintiff's lawsuit arose out of defendants' decision to transfer her from a Grand Blanc branch bank to a South Flint branch bank. Plaintiff was in training at the Grand Blanc branch when the branch staff learned that plaintiff was pregnant. Knowing of the pregnancy, defendant Elliott appointed plaintiff to be the Grand Blanc branch manager. Elliott noted that plaintiff had a rough start at the Grand Blanc branch, and that some employees had complained about plaintiff's management style. Elliott also noted an incident of insubordination in which plaintiff appeared to challenge Elliott's decision concerning staff assignments at a banking event. Less than a month after Elliott appointed plaintiff as the branch manager in Grand Blanc, Elliott decided to transfer plaintiff to be the branch manager at the Flint branch.

Plaintiff claims that the transfer from Grand Blanc to Flint was an adverse employment action arising from pregnancy discrimination. She alleges that both the assistant branch manager in Grand Blanc and another branch employee expressed concern that plaintiff's pregnancy would disrupt the operation of the branch. Plaintiff further alleges that these employees voiced their concerns to Elliott, and that Elliott transferred plaintiff because of her pregnancy.

We review de novo the trial court's decision to grant summary disposition. *Chen v Wayne State Univ*, 284 Mich App 172, 200; 771 NW2d 820 (2009). In our review, we consider the record in the light most favorable to the plaintiff. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 341 (2004). Summary disposition is appropriate only if the record demonstrates

that there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

The Michigan Civil Rights Act (CRA) prohibits employers from discriminating against employees on the basis of pregnancy. MCL 37.2201(d), MCL 37.2202(1); *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 132; 666 NW2d 186 (2003). A plaintiff may prove discrimination using direct or indirect evidence. *Sniecinski*, 469 Mich at 132. Direct evidence of discrimination is "evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Id*. at 133 (internal quotation marks and citations omitted).

Plaintiff contends that she presented direct evidence of discrimination to create a question of fact under the "cat's paw" theory, citing *Staub v Proctor Hosp*, ___ US ___; 131 S Ct 1186, 1190; ___ L Ed ___ (2011).[1] We disagree on two grounds. First, plaintiff has cited no published Michigan opinion that expressly adopted the cat's paw theory. Second, and more importantly, even if we were to adopt the cat's paw theory, the theory would not apply to plaintiff's claim. The federal courts apply the cat's paw theory when a supervisor engages in a discriminatory act, if the act influences another supervisor to make an employment decision adverse to the plaintiff. *Id*. at 1190. The *Staub* Court expressly withheld judgment on the question of whether discriminatory animus by a co-worker, as opposed to a supervisor, could be sufficient direct evidence of discrimination. *Id*. at 1194 n 4. Here, plaintiff has presented no evidence to demonstrate that the alleged discriminatory acts were committed by employees who had any supervisory authority over her and no evidence that the employees that engaged in the alleged discriminatory acts participated in the decision to transfer her. Given that the record contains no indication of discriminatory conduct by a supervisory employee, the cat's paw theory does not apply to plaintiff's claim.

Absent direct evidence of discrimination, plaintiff was required to present indirect evidence to create a question of fact concerning her discrimination claim. Indirect evidence requires proof that (1) plaintiff belonged to a protected class; (2) she received an adverse employment decision; (3) she was qualified for the position at issue; and (4) the circumstances of the change in employment allow an inference of discrimination. *Sniecinski*, 469 Mich at 134.

We need not examine each of the four factors, because we conclude that there is no genuine issue of fact on the second factor, i.e., whether there was an adverse employment action. To avoid summary disposition, plaintiff was required to present evidence other than her

[1] The "cat's paw" or "rubber stamp" theory allows a plaintiff to prove her case by proving discriminatory animus on the part of a supervisor who did not make the ultimate employment decision. *Staub*, 131 S Ct at 1190; see also *Hill v Lockheed Martin Logistics Mgt, Inc*, 354 F 3d 277, 290 (CA 4, 2004). The term "cat's paw" derives from a fable: "In the fable, a monkey induces a cat by flattery to extract roasting chestnuts from the fire. After the cat has done so, burning its paws in the process, the monkey makes off with the chestnuts and leaves the cat with nothing." *Staub* 131 S Ct at 1190 n 1; see also *Shager v Upjohn Co*, 913 F 2d 398, 405 (CA 7, 1990).

subjective impressions of the desirability of the Grand Blanc branch versus the Flint branch. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 362-363; 597 NW2d 250 (1999), citing *Kocsis v Multi-Care Mgt, Inc*, 97 F 3d 876, 886 (CA 6, 1996). It was not sufficient for plaintiff to prove that the transfer caused an inconvenience. *Id*. at 363-365. Plaintiff was required to present evidence that the employment action at issue was materially adverse. *Id.* Examples of adverse employment actions include a termination, a demotion that is "evidenced by a decrease in wage or salary," a reduction in job title, or a significant diminution in job responsibilities. *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 312; 660 NW2d 351 (2003) (internal quotation marks and citation omitted).

Plaintiff contends that the transfer decreased the amount of her potential bonus pay and decreased the likelihood that she would be promoted. The record negates this contention. The transfer did not alter her base salary. Moreover, although the maximum potential bonus for Grand Blanc was higher than the Flint maximum, all bonuses were performance based. Accordingly, a manager at the Flint branch could receive a higher bonus than a manager at the Grand Blanc branch if the Flint manager performed at a higher level than the Grand Blanc manager. The record demonstrates that in 2004 and 2005, the Flint manager received a higher annual bonus than the Grand Blanc manager. Regarding the likelihood of promotion, plaintiff has not demonstrated that she was denied the opportunity to apply for a promotion, or that defendants promoted another person rather than plaintiff during the relevant time period. Consequently, plaintiff has failed to provide evidence to create a question of fact as to whether the transfer altered her career track. See *Pena*, 255 Mich App at 313-315. As such, plaintiff has failed to meet the second requisite factor to establish a question of fact concerning employment discrimination.

Affirmed.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray
/s/ Pat M. Donofrio